

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

SOUTH CAROLINA COASTAL
CONSERVATION LEAGUE, et al.,

Plaintiffs,

v.

WILBUR ROSS, in his official capacity
as the Secretary of Commerce, et al.,

Defendants.

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) Civ. No. 2:18-cv-3326-RMG
)
) (Consolidated with 2:18-cv-3327-RMG)
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) **FEDERAL DEFENDANTS' STATUS**
) **REPORT**
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In response to the Court's Order dated May 2, 2019 (ECF 266), requiring Federal Defendants to inform the Court what impact, if any, a "recently reported announcement by Secretary of the Interior David Bernhardt" concerning the Department of the Interior's appraisal of the March 29, 2019 decision in *League of Conservation Voters et al. v. Trump et al.*, Case No. 3:17-cv-00101-SLG (D. Alaska), has on this case, "including on the pending permit requests before the Bureau of Ocean Energy Management ("BOEM") and the already issued Incidental Harassment Authorizations," Federal Defendants and BOEM¹ provide the following information:

1. *League of Conservation Voters et al. v. Trump et al.*, Case No. 3:17-cv-00101-SLG (D. Alaska) addresses the authority of the President to modify prior leasing withdrawals under Section 12(a) of the Outer Continental Shelf Lands Act ("OCSLA"). That decision has no legal effect on any proposed seismic activities (in the Atlantic OCS or elsewhere)

¹ Neither the Department of Interior nor BOEM are parties to the lawsuit, and are providing this information at the Court's request.

or the Incidental Harassment Authorizations NMFS issued in November 2018.

2. Specifically, BOEM may authorize seismic survey activity in the OCS even in areas of the OCS that are not open to oil and gas exploration. Entities seeking to conduct geological and geophysical surveys can therefore obtain a permit in *any* area of the OCS, including those areas that have been withdrawn from leasing. *See* 43 U.S.C. § 1340; 30 C.F.R. pt. 551; *see also* Declaration of W. Cruickshank at ¶ 4.
3. Neither the Department of the Interior nor the Secretary of the Interior have made any announcement that the Department “may wait until the resolution of any potential appeal” of the March 29, 2019 decision in *League of Conservation Voters et al. v. Trump et al.*, Case No. 3:17-cv-00101-SLG “prior to making any decision on authorizing offshore activities.” ECF 266; Declaration of W. Cruickshank at ¶ 5. The Department of the Interior views the issues addressed in the *League of Conservation Voters* decision as legally distinct from those presented in the context of seismic surveys in the OCS. The Department of Interior is evaluating all of its options in light of that recent court decision. Declaration of W. Cruickshank at ¶ 5. “Specifically, the Department is evaluating what, if any, effect that decision may have on planning for OCS lease sales in the National OCS Oil and Gas Leasing Program (National Program) of the Department.” *Id.* Again, “the location of sales scheduled in the National Program is not determinative of where seismic exploration may be permitted.” *Id.*
4. In light of the foregoing, the permit applications submitted by Spectrum Geo Inc., TGS-NOPEC Geophysical Company, ION GeoVentures, WesternGeco, LLC, and CGG are still under review by BOEM and the Department of Interior. Declaration of W. Cruickshank at ¶ 6.

Respectfully submitted this 9th day of May, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2019, I electronically filed the foregoing Federal Defendants' Status Report with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all counsel of record.

/s/ Alison C. Finnegan